

**STATE OF CONNECTICUT
BOARD OF EXAMINERS FOR NURSING**

Department of Public Health

Petition No. 2002-1030-010-091

vs.

Barbara Daly, R.N. Lic. No. E58640
Respondent

MEMORANDUM OF DECISION

Procedural Background

The Board of Examiners for Nursing (hereinafter "the Board") was presented by the Department of Public Health (hereinafter "the Department") with a Statement of Charges and Motion for Summary Suspension dated December 2, 2002. Dept. Exh. 1. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Barbara Daly (hereinafter "respondent") which would subject respondent's registered nurse license to disciplinary action pursuant to *Conn. Gen. Stat.* §§ 19a-17 and 20-99(b).

Based on the allegations in the Statement of Charges and accompanying affidavits and reports, the Board found that respondent's continued nursing practice presented a clear and immediate danger to public health and safety. On December 4, 2002, the Board ordered, pursuant to its authority under §§ 4-182(c) and 19a-17(c) of the General Statutes of Connecticut, that respondent's registered nurse license be summarily suspended pending a final determination by the Board of the allegations contained in the Statement of Charges. Dept. Exh. 1.

The Board issued a Notice of Hearing dated December 4, 2002, scheduling a hearing for May 21, 2003. Dept. Exh. 1.

Respondent was provided notice of the hearing and charges against her. The Notice of Hearing and Statement of Charges were delivered by certified mail to respondent's attorney on December 5, 2002. Dept. Exh. 1.

Respondent submitted a written Answer to the Statement of Charges. Bd. Exh. 2.

The hearing scheduled for May 21, 2003 was continued at respondent's request. The hearing was rescheduled to October 15, 2003. Dept. Exh. 1.

In a letter, dated September 22, 2003, respondent's attorney withdrew her representation of respondent. Board Exh. 1.

The hearing scheduled for October 15, 2003 was continued at the request of the Department. The hearing was rescheduled to February 18, 2004. Notice was sent to the respondent's last known address on record with the Department by first class and certified mail. The certified mailing was returned unclaimed; however, the first class mailing was not returned.

The hearing took place on February 18, 2004, at the Hartford Hospital Newington Campus, Curtis Building Amphitheater, 181 Patricia M. Genova Drive, Newington, Connecticut.

Respondent was not present during the hearing and was not represented by counsel. Transcript, February 18, 2004, p. 2.

Each member of the Board involved in this decision attests that he/she was present at the hearing or has reviewed the record, and that this decision is based entirely on the record, the law, and the Board's specialized professional knowledge in evaluating the evidence.

Findings of Fact

Based on the testimony given and the exhibits offered into evidence, the Board makes the following Findings of Fact:

1. Respondent was issued registered nurse license number E58640, on June 28, 1996. Respondent was the holder of said license at all times referenced in the Statement of Charges. Dept. Exh. 1-h.
2. Pursuant to a Consent Order dated April 3, 2002, the Board ordered that respondent's registered nurse license be placed on probation for a period of four years. Such disciplinary action was based upon respondent's diversion of morphine and other opiates from patient stocks for her own personal use while employed at Bridgeport Hospital during 2001. Said Order specifically provided that respondent shall not obtain or use controlled substances, legend drugs or alcohol in any form unless prescribed or recommended for a legitimate therapeutic purpose by a licensed health care professional authorized to prescribe medications and that respondent shall submit to random alcohol/drug screens in accordance with requirements of the consent order that shall be negative for the presence of alcohol and drugs. The Order further required that respondent notify the Department of any change in her employment status. Dept. Exh. 1-b.
3. In a report dated October 24, 2002, respondent's therapist advised the Department that respondent had been using heroin for several weeks. Dept. Exhs. 1-a, 1-h; Transcript, p. 8.
4. Respondent submitted to random urine screening on September 24, 2002. Laboratory results for the September 24, 2002 urine specimen were positive for the presence of morphine. Dept. Exh. 1G. Transcript, p. 9.

5. Respondent failed to appear for urine screens when called on four occasions: two occasions in July, 2002, one occasion the week of September 8-14, 2002, and one occasion the week of September 29-October 5, 2002. Dept. Exh.1-a; Transcript, p. 9.
6. Respondent failed to inform the Department that she had obtained employment at Middlesex Hospital, Middletown, Connecticut and that she was terminated prior to completing orientation. Dept. Exh. 1-a; Transcript, p. 10.

Conclusions of Law and Discussion

In consideration of the above Findings of Fact, the following conclusions are rendered:

Barbara Daly held a valid registered nurse license in the State of Connecticut at all times referenced in the Statement of Charges.

The Notice of Hearing and Statement of Charges provided sufficient legal notice as mandated by *Conn. Gen. Stat.* §§ 4-177(a) and (b), and 4-182(c). The hearing was held in accordance with *Conn. Gen. Stat.* Chapters 54 and 368a as well as §§ 19a-9-1 through 19a-9-29 of the Regulations of Connecticut State Agencies.

The Notice of Hearing, Statement of Charges, and the hearing process provided respondent with the opportunity to demonstrate compliance with all lawful requirements for the retention of his license as required by *Conn. Gen. Stat.* § 4-182(c).

The Department bears the burden of proof by a preponderance of the evidence in this matter.

PARAGRAPH 4 of the Statement of Charges alleges that respondent had been using heroin.

PARAGRAPH 6 of the Statement of Charges alleges that on September 24, 2002 respondent tested positive for morphine.

PARAGRAPH 7 of the Statement of Charges alleges that respondent failed to appear for required urine screening on four occasions.

PARAGRAPH 8 of the Statement of Charges alleges that respondent failed to inform the Department that she had obtained employment at Middlesex Hospital.

PARAGRAPH 9 of the Statement of Charges alleges that respondent's conduct as alleged in the Statement of Charges constitutes violations of the terms of probation of her registered nurse license.

Respondent denied these charges. Answer: Bd. Exh. 2.

Based on its findings of fact, the Board concludes that respondent's conduct as alleged in the Statement of Charges is proven by a preponderance of the evidence presented. The Board further concludes that said conduct violates the terms of probation as set forth in the Consent Order dated April 3, 2002. Therefore, respondent's registered nurse license is subject to disciplinary action pursuant to *Conn. Gen. Stat.* § 19a-17.

Order

Pursuant to its authority under *Conn. Gen. Stat.* §§ 19a-17 and 20-99, the Board of Examiners for Nursing hereby orders the following:

That for Paragraphs 4, 6, 7, 8 and 9 of the Statement of Charges, respondent's registered nurse license number E58640, is revoked effective the date this Memorandum of Decision is signed by the Board.

The Board of Examiners for Nursing hereby informs respondent, Barbara Daly, and the Department of Public Health of the State of Connecticut of this decision.

Dated at Hartford, Connecticut this 18th day of August 2004.

BOARD OF EXAMINERS FOR NURSING

By Nancy L. Beford